

AN ACT

relating to the environmental review process for transportation projects.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.607, Transportation Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Not later than January 1, 1997, and every fifth year after that date, the department and each state agency that is responsible for the protection of the natural environment or for the preservation of historical or archeological resources shall examine and revise their memorandum of understanding that:

(1) describes the responsibilities of each agency entering into the memorandum relating to the review of the potential environmental, historical, or archeological effect of a highway project;

(2) specifies the responsibilities of each agency entering into the memorandum relating to the review of a highway project;

(3) specifies the types of information the department must provide to the reviewing agency and the period during which the department must provide the information;

(4) specifies the period during which the reviewing agency must review the highway project and provide comments to the

1 department, as negotiated by the department and the agency but
2 which may not exceed 45 days after the date the agency receives a
3 request for comments from the department; [and]

4 (5) specifies that comments submitted to the
5 department later than the period specified under Subdivision (4)
6 will be considered by the department to the extent possible; and

7 (6) includes any other agreement necessary for the
8 effective coordination of the review of the environmental,
9 historical, or archeological effect of a highway project.

10 (c) The department by rule shall establish procedures
11 concerning coordination with agencies in carrying out
12 responsibilities under agreements under this section.

13 SECTION 2. (a) Chapter 201, Transportation Code, is
14 amended by adding Subchapter I-1 to read as follows:

15 SUBCHAPTER I-1. ENVIRONMENTAL REVIEW PROCESS

16 Sec. 201.751. DEFINITIONS. In this subchapter:

17 (1) "Day" means a calendar day.

18 (2) "Federal Highway Administration" means the United
19 States Department of Transportation Federal Highway
20 Administration.

21 (3) "Highway project" means a highway or related
22 improvement that is:

23 (A) part of the state highway system; or

24 (B) not part of the state highway system but
25 funded wholly or partly by federal money.

26 (4) "Local government sponsor" means a political
27 subdivision of the state that:

1 (A) elects to participate in the planning,
2 development, design, funding, or financing of a highway project;
3 and

4 (B) is a municipality or a county, a group of
5 adjoining counties, a county acting under Chapter 284, a regional
6 tollway authority operating under Chapter 366, a regional mobility
7 authority operating under Chapter 370, a local government
8 corporation, or a transportation corporation created under Chapter
9 431.

10 Sec. 201.752. STANDARDS. (a) The commission by rule shall
11 establish standards for processing an environmental review
12 document for a highway project. The standards must increase
13 efficiency, minimize delays, and encourage collaboration and
14 cooperation by the department with a local government sponsor, with
15 a goal of prompt approval of legally sufficient documents.

16 (b) The standards apply regardless of whether the
17 environmental review document is prepared by the department or a
18 local government sponsor. The standards apply to work performed by
19 the sponsor and to the department's review process and
20 environmental decision.

21 (c) The standards must address, for each type of
22 environmental review document:

23 (1) the issues and subject matter to be included in the
24 project scope prepared under Section 201.754;

25 (2) the required content of a draft environmental
26 review document;

27 (3) the process to be followed in considering each

1 type of environmental review document; and

2 (4) review deadlines, including the deadlines in
3 Section 201.759.

4 (d) The standards must include a process for resolving
5 disputes arising under this subchapter, provided that the dispute
6 resolution process must be concluded not later than the 60th day
7 after the date either party requests dispute resolution.

8 (e) For highway projects described in Section 201.753(a),
9 the standards may provide a process and criteria for the
10 prioritization of environmental review documents in the event the
11 department makes a finding that it lacks adequate resources to
12 timely process all documents it receives. Standards established
13 pursuant to this subsection must provide for notification to a
14 local government sponsor if processing of an environmental review
15 document is to be delayed due to prioritization, and must ensure
16 that the environmental review document for each highway project
17 will be completed no later than one year prior to the date planned
18 for publishing notice to let the construction contract for the
19 project, as indicated in a document identifying the project under
20 Section 201.753(a)(1) or a commission order under Section
21 201.753(a)(2).

22 Sec. 201.753. ENVIRONMENTAL REVIEW LIMITED TO CERTAIN
23 PROJECTS. (a) A local government sponsor or the department may
24 prepare an environmental review document for a highway project only
25 if the highway project is:

26 (1) identified in the financially constrained portion
27 of the approved state transportation improvement program or the

financially constrained portion of the approved unified transportation program; or

(2) identified by the commission as being eligible for participation under this subchapter.

(b) Notwithstanding Subsection (a), a local government sponsor may prepare an environmental review document for a highway project that is not identified by the commission or in a program described by Subsection (a) if the sponsor submits with its notice under Section 201.755 a fee in an amount established by commission rule, but not to exceed the actual cost of reviewing the environmental review document.

(c) A fee received by the department under Subsection (b) must be deposited in the state highway fund and used to pay costs incurred under this subchapter.

Sec. 201.754. SCOPE OF PROJECT. If an environmental review document is prepared by a local government sponsor, the local government sponsor must prepare a detailed scope of the project in collaboration with the department before the department may process the environmental review document.

Sec. 201.755. NOTICE TO DEPARTMENT. (a) A local government sponsor may submit notice to the department proposing that the local government sponsor prepare the environmental review document for a highway project.

(b) The notice must include:

(1) the project scope prepared under Section 201.754;
and

(2) a request for classification of the project.

Sec. 201.756. LOCAL GOVERNMENT SPONSOR RESPONSIBILITIES. A local government sponsor that submits notice under Section 201.755 is responsible for preparing all materials for:

- (1) project scope determination;
- (2) environmental reports;
- (3) the environmental review document;
- (4) environmental permits and conditions;
- (5) coordination with resource agencies; and
- (6) public participation.

Sec. 201.757. DETERMINATION OF ADMINISTRATIVELY COMPLETE ENVIRONMENTAL REVIEW DOCUMENT. (a) A local government sponsor's submission of an environmental review document must include a statement from the local government sponsor that the document is administratively complete, ready for technical review, and compliant with all applicable requirements.

(b) Not later than the 20th day after the date the department receives a local government sponsor's environmental review document, the department shall either:

- (1) issue a letter confirming that the document is administratively complete and ready for technical review; or
- (2) decline to issue a letter confirming that the document is administratively complete and ready for technical review, in accordance with Section 201.758.

Sec. 201.758. DEPARTMENT DECLINES TO CONFIRM THAT DOCUMENT IS ADMINISTRATIVELY COMPLETE. (a) The department may decline to issue a letter confirming that an environmental review document is administratively complete and ready for technical review only if

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1 the department sends a written response to the local government
2 sponsor specifying in reasonable detail the basis for its
3 conclusions, including a listing of any required information
4 determined by the department to be missing from the document.

5 (b) If the department provides notice under Subsection (a),
6 the department shall undertake all reasonable efforts to cooperate
7 with the local government sponsor in a timely manner to ensure that
8 the environmental review document is administratively complete.

9 (c) The local government sponsor may resubmit any
10 environmental review document determined by the department under
11 Section 201.757 not to be administratively complete, and the
12 department shall issue a determination letter on the resubmitted
13 document not later than the 20th day after the date the document is
14 resubmitted.

15 Sec. 201.759. REVIEW DEADLINES. (a) The following
16 deadlines must be included in the standards adopted under Section
17 201.752:

18 (1) the department shall issue a classification letter
19 not later than the 30th day after the date the department receives
20 notice from a local government sponsor under Section 201.755;

21 (2) for a project classified as a programmatic
22 categorical exclusion, the environmental decision must be rendered
23 not later than the 60th day after the date the supporting
24 documentation is received by the department;

25 (3) for a project classified as a categorical
26 exclusion, the environmental decision must be rendered not later
27 than the 90th day after the date the supporting documentation is

1 received by the department;

2 (4) for a project that requires the preparation of an
3 environmental assessment:

4 (A) the department must provide all department
5 comments on a draft environmental assessment not later than the
6 90th day after the date the draft is received by the department; and

7 (B) the department must render the environmental
8 decision on the project not later than the 60th day after the later
9 of:

10 (i) the date the revised environmental
11 assessment is submitted to the department; or

12 (ii) the date the public involvement
13 process concludes;

14 (5) the department must render the environmental
15 decision on any reevaluation not later than the 120th day after the
16 date the supporting documentation is received by the department;
17 and

18 (6) for a project that requires the preparation of an
19 environmental impact statement, the department shall render the
20 environmental decision not later than the 120th day after the date
21 the draft final environmental impact statement is submitted.

22 (b) Review deadlines under this section specify the date by
23 which the department will render the environmental decision on a
24 project or the time frames by which the department will make a
25 recommendation to the Federal Highway Administration, as
26 applicable.

27 (c) A deadline that falls on a weekend or official state

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1 holiday is considered to occur on the next business day.

2 Sec. 201.760. SUSPENSION OF TIME PERIODS. The computation
3 of review deadlines under Section 201.759 does not begin until an
4 environmental review document is determined to be administratively
5 complete, and is suspended during any period in which:

6 (1) the document that is the subject of the review is
7 being revised by or on behalf of the local government sponsor in
8 response to department comments;

9 (2) the highway project is the subject of additional
10 work, including a change in design of the project, and during the
11 identification and resolution of new significant issues; or

12 (3) the local government sponsor is preparing a
13 response to any issue raised by legal counsel for the department
14 concerning compliance with applicable law.

15 Sec. 201.761. AGREEMENT BETWEEN LOCAL GOVERNMENT SPONSOR
16 AND DEPARTMENT. Notwithstanding any provision of this subchapter
17 or any other law, a local government sponsor and the department may
18 enter into an agreement that defines the relative roles and
19 responsibilities of the parties in the preparation and review of
20 environmental review documents for a specific project. For a
21 project for which an environmental decision requires the approval
22 of the Federal Highway Administration and to the extent otherwise
23 permitted by law, the Federal Highway Administration may also be a
24 party to an agreement between a local government sponsor and the
25 department under this section.

26 Sec. 201.762. REPORTS TO COMMISSION AND LEGISLATURE.
27 (a) Not later than June 30 and December 31 of each year, the

department shall submit a report to the commission at a regularly scheduled commission meeting identifying projects being processed under the procedures of this subchapter and the status of each project, including:

(1) how the project was classified for environmental review;

(2) the current status of the environmental review;

(3) the date on which the department is required to make an environmental decision under applicable deadlines;

(4) an explanation of any delays; and

(5) any deadline under Section 201.759 missed by the department.

(b) Not later than December 1 of each year, the department shall submit a report to the members of the standing legislative committees with primary jurisdiction over matters related to transportation regarding the implementation of this subchapter, including a status report for the preceding 12-month period that contains the information described in Subsection (a).

(c) The department shall post copies of the reports required under this section on its Internet website and shall provide a copy of the report required by Subsection (b) to each member of the legislature who has at least one project covered by the report in the member's district.

(d) The department shall make available on its Internet website and update regularly the status of projects being processed under this subchapter.

(b) The Texas Transportation Commission shall adopt rules

1 to implement Subchapter I-1, Chapter 201, Transportation Code, as
2 added by this Act, not later than March 1, 2012.

3 (c) Subchapter I-1, Chapter 201, Transportation Code, as
4 added by this Act, applies only to a notice of a local government
5 sponsor proposing the sponsor's preparation of an environmental
6 review document that is received by the Texas Department of
7 Transportation on or after September 1, 2011. Submissions to the
8 Texas Department of Transportation received before September 1,
9 2011, are governed by the law in effect on the date the submission
10 was received, and that law is continued in effect for that purpose.

11 SECTION 3. Subchapter A, Chapter 222, Transportation Code,
12 is amended by adding Sections 222.005 and 222.006 to read as
13 follows:

14 Sec. 222.005. AUTHORIZATION TO PROVIDE ASSISTANCE TO
15 EXPEDITE ENVIRONMENTAL REVIEW. (a) The department, a county, a
16 regional tollway authority operating under Chapter 366, or a
17 regional mobility authority operating under Chapter 370 may enter
18 into an agreement to provide funds to a state or federal agency to
19 expedite the agency's performance of its duties related to the
20 environmental review process for the applicable entity's
21 transportation projects, including those listed in the applicable
22 metropolitan planning organization's long-range transportation
23 plan under 23 U.S.C. Section 134.

24 (b) Except as provided by Subsection (c), an agreement
25 entered into under this section:

26 (1) may specify transportation projects the
27 applicable entity considers to be priorities for review; and

1 (2) must require the agency receiving money to
2 complete the environmental review in less time than is customary
3 for the completion of environmental review by that agency.

4 (c) The department may enter into a separate agreement for a
5 transportation project that the department determines has regional
6 importance.

7 (d) An agreement entered into under this section does not
8 diminish or modify the rights of the public regarding review and
9 comment on transportation projects.

10 (e) An entity entering into an agreement under this section
11 shall make the agreement available on the entity's Internet
12 website.

13 Sec. 222.006. ENVIRONMENTAL REVIEW CERTIFICATION PROCESS.
14 The department by rule shall establish a process to certify
15 department district environmental specialists to work on all
16 documents related to state and federal environmental review
17 processes. The certification process must:

18 (1) be available to department employees; and

19 (2) require continuing education for recertification.

20 SECTION 4. Section 12.0011, Parks and Wildlife Code, is
21 amended by adding Subsection (b-1) to read as follows:

22 (b-1) Recommendations and information submitted by the
23 department under Subsection (b) in response to a request for
24 comments from the Texas Department of Transportation must be
25 submitted not later than the 45th day after the date the department
26 receives the request.

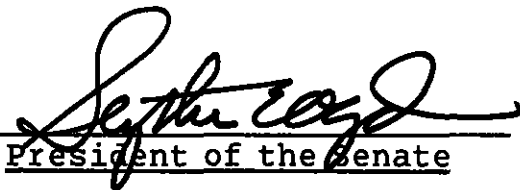
27 SECTION 5. Subsection (a), Section 201.607, Transportation

1 Code, as amended by this Act, and Subsection (b-1), Section
2 12.0011, Parks and Wildlife Code, as added by this Act, apply only
3 to a request for comments from the Texas Department of
4 Transportation received by a state agency on or after September 1,
5 2011. As necessary, the Texas Department of Transportation and
6 each affected state agency shall promptly revise the memorandum of
7 understanding required by Section 201.607, Transportation Code, to
8 implement the change made by this Act to Subsection (a), Section
9 201.607, Transportation Code.

10 SECTION 6. (a) Section 222.005, Transportation Code, as
11 added by this Act, takes effect immediately if this Act receives a
12 vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect,
15 Section 222.005 takes effect September 1, 2011.

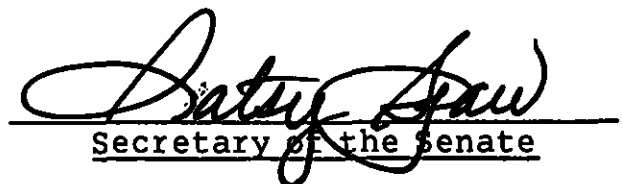
16 (b) Except as provided by Subsection (a) of this section,
17 this Act takes effect September 1, 2011.

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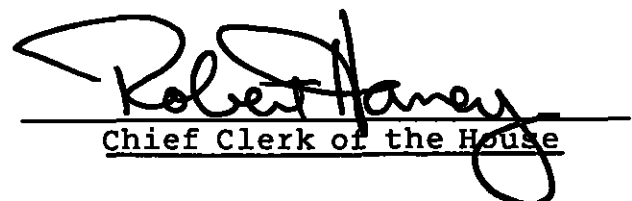

President of the Senate


Speaker of the House

I hereby certify that S.B. No. 548 passed the Senate on March 31, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 25, 2011, by the following vote: Yeas 31, Nays 0.


Secretary of the Senate

I hereby certify that S.B. No. 548 passed the House, with amendment, on May 23, 2011, by the following vote: Yeas 142, Nays 0, one present not voting.


Chief Clerk of the House

Approved:

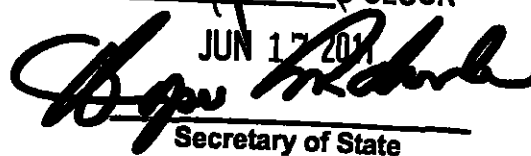
17 JUN '11

Date


Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
O'CLOCK

JUN 17 2011


Secretary of State